

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Dingman, et al.	Conf. No.:	2107
Serial No.:	10/776,071	Art. Unit:	3782
Filed:	Feb. 11, 2004	Examiner:	Margaret Linnea Olson
Title:	APPARATUS HAVING A BOTTOM OPENING POCKET	Docket. No.:	TOUG-0002

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Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request that a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 21-40 are currently pending.

Turning to the rejections in the Final Office Action, claims 21, 26, and 28-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Young (US 6,015,072, hereinafter “Young”) in view of Roh (US 6,283,347, hereinafter “Roh”); claims 22-23 are rejected under § 103(a) as being unpatentable over Young in view of Roh, and further in view of Rohrbach et al. (US D426951, hereinafter “Rohrbach”); claims 24-25 are rejected as being unpatentable over Young in view of Roh and further in view of Lewis (US 5,060,314, hereinafter “Lewis”); claims 30-32 and 34-36 are rejected under § 103(a) as being unpatentable over Ellis (US 3,105,359, hereinafter “Ellis”), in view of Roh and further in view of Rohrbach; claims 37-38 and 40 are rejected under § 103(a) as being unpatentable over Ellis in view of Roh and further in view of

Wakamatsu (JP 2002-159317A, hereinafter, “Wakamatsu”); and claims 33 and 39 are rejected under § 103(a) as being unpatentable over Ellis and Roh in view of Wakamatsu and further in view of Rohrbach. Applicants submit that these rejections are clearly improper and are without basis because at least one limitation in each claim is not taught by the combination of references cited by the Office.

As argued in the November 20, 2007 Response (hereinafter, the “Response”), Applicants submit that the cited references fail to teach or suggest each and every element of independent claim 21 (Response, p. 8). To wit, Applicants submit that Young fails to teach a backpack including the claimed feature of “a bottom opening pocket attached to an exterior side of the large pocket,” (claim 21, lines 7-8 (emphasis added)). Young’s backpack instead teaches a lower portion 12, which includes openings fastened by zippers 80 and 84. As is very clearly illustrated in Young’s FIG. 5, the openings of lower portion 12 are located on an exterior side and along the top edge of lower portion 12 when the backpack is oriented “in an upright position.” Accordingly, neither these pockets, nor the balance of Young, teach the feature of a bottom opening pocket.

As further argued in the Response (p. 8), Applicants submit that Young also fails to teach the feature of “a bottom opening pocket” (claim 21, line 7) including “an opening at a bottom of the holding area when the backpack is in the upright position” (*id.*, line 12-13 (emphasis added)). Instead, Young teaches a top- or side-opening pocket located on the lower portion of the backpack, including an opening at the top and side of the holding area, e.g., lower portion 12, which are fastened using zippers 80 and 84. This feature is in contrast with the “opening at the bottom of the holding area” of claim 21. Applicants respectfully submit that the Young reference is devoid of any teaching of an opening located on the bottom panel of the pack.

Applicants further argued in the Response (p. 9) that Young fails to teach the feature of “a bottom opening pocket” (claim 21, line 7), including “a bottom flap for covering the opening, the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening” (*id.*, lines 14-16). As discussed above, Young does not teach a bottom opening pocket of any kind. Further, the pockets taught by Young, side- and top-opening as they are, also do not include any type of “flap for covering the opening” whatsoever. Young’s pockets are instead fastened shut using zippers 80 and 84, which draw the sides of the opening together, in lieu of a flap covering the opening.

As further argued in the Response (p. 9), Roh does not cure the defects in the rejection left by Young. Applicants submit that Roh’s flap 316, “an opaque panel ... on the top and rear to provide protection from sun exposure” (col. 5, lines 51-52) not only fails to teach a “bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening” (claim 21, lines 14-16), but also fails to render such a bottom flap obvious. Not only is Roh’s flap 316 located specifically on the top rather than the bottom of the pack, but it does not, as the Office asserts, “allow the pocket to be easily accessed from certain angles” (Office Action, p. 3). Even if it did, however, Applicants assert that one having ordinary skill in the art would not be motivated to combine the teachings of Young with those of Roh because Young’s zipper-fastened pockets neither require nor would utilize a flap to cover the opening.

With respect to claim 30, as Applicants argued in the Response, Ellis, Roh, and Rohrbach fail to teach each and every element of the claimed invention (p. 11). For example, Applicants submit that Ellis fails to teach “a pocket configured to be located adjacent to the back of an individual during use,” comprising in relevant part, “a left side and a right side that form a

substantially rectangular holding area” (claim 30, lines 1 and 6). Ellis teaches at FIG. 1 (cited in the Office Action) a pouch 24 which is “adapted to adjustably receive an air lung 26 such as used by skin divers therein.” (Col. 2, lines 1-3.) Ellis’ pouch 24, however, is substantially cylindrical in shape, rather than rectangular, as in the invention of claim 30. As admitted in the Office Action, Ellis further fails to teach the feature of “the bottom flap permanently affixed to at least one of: the outer side, the left side, or the right side and extending therefrom during opening.” (Claim 30, lines 10-11.) Ellis also fails to teach the feature of “means for releasably attaching the bottom flap ... such that the individual can open the bottom flap by pulling in a downward manner with one hand while the pocket is adjacent to the back” (*id.*, lines 12-14), as nothing in the reference indicates that Ellis’ air lung could be removed by the vest wearer while keeping the pocket “adjacent to the back.” (Response, p. 11.) Applicants further argued in the Response that Roh fails to cure the defects in the rejection left by Ellis, for reasons analogous to those discussed above relative to claim 21. (*See id.*, p. 12.)

In the Response, Applicants further argued that Rohrbach fails to cure the defects in Ellis and Roh, and also fails to teach the feature of “a means for adjusting a horizontal area of a backpack with an adjustable strap and buckle on either side of a pocket” at FIGS. 2-3, as it is unclear from these figures that the strap and buckle depicted provide horizontal adjustability of a horizontal area that includes a pocket. (*Id.*)

Accordingly, as submitted in the Response, Applicants assert that the sum total of Ellis, Roh, and Rohrbach fails to disclose each and every feature of the invention of claim 30. (*Id.*)

With respect to claim 37, Applicants respectfully submit that Ellis, Roh, and Wakamatsu, alone or in combination, fail to teach each and every element of the claimed invention. (Response, p. 13.) As discussed above with respect to claim 30, Applicants submit that Ellis

fails to teach “a bottom opening pocket” (claim 37, line 3) including, among other features, “a substantially rectangular holding area” (*id.*, line 7). Additionally, neither Roh nor a combination of Ellis with Roh teaches the feature of “a bottom flap for covering the opening, the bottom flap permanently affixed...” (*id.*, line 11 *et seq.*). Applicants further argued that Wakamatsu fails to render the invention of claim 37 obvious in view of the teachings and the above-noted deficiencies of Ellis and Roh (Response, p. 14.), as the Office only relies on Wakamatsu for the use of a pocket included in a wheelchair. Accordingly, Applicants respectfully submit that the wheelchair comprising a chair and a bottom opening pocket of claim 37 is not rendered obvious in view of the cited prior art.

Dependent claims 22-29, 31-36, and 38-40 are believed to be allowable for the reasons presented above as well as for their own additional claimed subject matter.

In view of the collective deficiencies of Young, Roh, Rohrbach, Lewis, Ellis, and Wakamatsu, the Office has failed to state a *prima facie* case of obviousness. Accordingly, this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution. Should the Examining Panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants’ undersigned attorney at the telephone number listed below.

Respectfully submitted,

/John W. LaBatt/

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